

**DRAFT**  
For Discussion Purpose Only  
3-18-91

MEMORANDUM OF UNDERSTANDING  
Starvation Reservoir Operation and  
Duchesne River Distribution Schedule

THIS MEMORANDUM OF UNDERSTANDING made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1991, between the UINTAH BASIN IRRIGATION COMPANY, a mutual water company owning primary water rights from the Duchesne River and its tributaries, hereinafter referred to as the "Company", and the CENTRAL UTAH WATER CONSERVANCY DISTRICT, hereinafter referred to as the "District".

RECITALS:

The United States Bureau of Reclamation, hereinafter referred to as "Reclamation", is constructing the Bonneville Unit of the Central Utah Project, hereinafter referred to as the "Project", and the District has contracted to repay the reimbursable costs of the Project and to operate and maintain the Project facilities when such facilities are assigned to the District. The Project includes, among other facilities, the Starvation System, which is made up of Starvation Dam and Reservoir and the Knight Diversion Dam, Feeder Canal and Tunnel.

The Duchesne-Strawberry River Commissioner, hereinafter referred to as the "River Commissioner", administers the delivery of direct flow water rights under the direction of the Utah State Engineer, hereinafter referred to as the "State Engineer", and since about 1969 Reclamation or the District has operated the Starvation System to provide a supplemental supply of Project Irrigation Water to various water users that have subscribed for Project Water.

After studying the irrigation requirements of lands along the Duchesne River and taking into account other hydrologic considerations, the State Engineer has over a period of years recommended to the District Court of Duchesne County, hereinafter referred to as the "Court", that the river system be operated on an interim basis to allow a diversion requirement or "duty" at the river headgates of 4.0 acre-feet per acre, and the Court has, when necessary, entered interim orders approving this recommendation on a year to year basis.

The River Commissioner, under the direction of the State Engineer and the Court, has thus, for several years, administered the direct flow water rights on the Duchesne River based on a duty and delivery schedule which allows for an annual diversion of up to 4.0 acre-feet per acre at the river headgates.

Generally, the water users have supported that duty and the delivery schedules. However, the Company believes that the 4.0 acre-feet per acre is not adequate for the lands of its shareholders and has protested the order of distribution. The Company diverts water from the lower Duchesne River under Water Right Nos. 43-462 (A3306) and 43-1698 (A3838a) and conveys its water several miles through the Grey Mountain and Pleasant Valley canals. The Company supplies water to irrigate a total of 10,304 acres, of which 7,253 acres are Project Irrigable Lands in the Pleasant Valley area. The Company has asserted that the growing season in Pleasant Valley is significantly longer than in other parts of the Basin. It also asserts that it receives less precipitation, and that this results in a higher irrigation

requirement in Pleasant Valley as compared to other areas in the Duchesne River Basin. In the past the Company has urged the Court to allow up to a 5.0 acre-feet duty for that area. The District and others have opposed this, and the Court in the past has adopted a 4.0 acre-feet interim duty for distribution of direct flow water for the Company.

The delivery schedule, for direct flow diversions, has provided a variable diversion rate in cubic feet per second for specific periods of time which will allow for a 4.0 acre-feet per acre duty over the irrigation season. The water diverted under the delivery schedule is regulated by the River Commissioner for direct flow water rights based upon the respective priority dates. Project storage water is provided by the District, upon demand, in accordance with the storage delivery schedule provided for in existing contracts with those who have subscribed for Project Water. The water users, including the Company, could make more efficient use of their direct flow irrigation water if the water could be temporarily stored.

In order to resolve the ongoing dispute, the District is willing (a) to permit, on a space available basis, the use of needed Project storage and conveyance facilities to permit the storage and use of direct flow water of the Company in Starvation Reservoir to regulate and facilitate the more efficient use thereof, but only after approval by the State Engineer or adoption of a distribution order by the Court allowing for such practice, and upon written concurrence by Reclamation; (b) to permit the Company, within the limits of available Project Water,

to subscribe for up to an additional 0.5 acre-foot per acre of Project Water for up to 7,253 acres of Project Irrigable Land; and (c) with concurrence of Reclamation to modify the early season limitation under the storage delivery schedules, all as set forth herein.

In this regard it is acknowledged that pursuant to Contract No. 14-05-400-4286, dated December 28, 1965, as amended and supplemented, hereinafter referred to as the "Repayment Contract", the District has the permanent right to the yield of the Project, and Reclamation has estimated the yield of the Starvation System (a part of the Project) to be 24,400 acre-feet annually. Reclamation has issued to the District Development Block Notice No. 1 for 21,400 acre-feet annually. Reclamation reserved the other 3,000 acre-feet of Starvation Reservoir yield to accommodate the possible development of some lands in the Duchesne River Drainage not now being irrigated. Part or all of the 3,000 acre-feet can now be made available by Reclamation. There is also about 750 acre-feet of Development Block Notice No. 1 Project Water which has not been allocated by the District. Also, as explained hereafter, the District may be able to make additional water available by modifying the operation of Starvation Reservoir, or by reducing subscriptions already made by others, but with their consent, when it is agreed that present subscriptions are too high.

Because it is the desire of the parties hereto to resolve the differences that exist between them on the Duchesne River in relation to the duty of water for irrigated lands, and the

delivery schedule for direct flow diversion and available storage space in Starvation Reservoir, without resorting to litigation, the parties hereto agree as follows:

1. The parties anticipate that the Duchesne River will be administered on the basis of annual interim orders until the State Engineer has completed his work and submitted a proposed determination to the Court for final adoption. At that time the duty of water will be recommended to the Court by the State Engineer, but will ultimately be fixed by the Court. In the past the parties hereto, and others, have disagreed on the duty of water for lands irrigated by shareholders of the Company in Pleasant Valley. The parties hereto agree that they will jointly support interim orders and a final order which will be consistent herewith.

2. If the duty fixed by the Court is not in harmony herewith; that is, if it does not fix the duty of water at 4 acre-feet per acre and approve the arrangement outlined herein for the Company to receive up to 0.5 acre-foot of additional Project storage water for up to 7,253 acres of its Project irrigable land in Pleasant Valley, either of the parties hereto may upon written notice cancel this agreement.

3. The parties acknowledge that Reclamation cannot enter into contracts for use of Project Works extending beyond 50 years, and, therefore, it is agreed by the parties that this agreement, as to the use of Project facilities, shall be for a term of 50 years.

4. Both parties hereto will support a diversion requirement at the River headgates of 4.0 acre-feet per acre for all canals which divert water from the Duchesne-Strawberry River System, plus up to the agreed 0.5 acre-foot of Project storage water for up to 7,253 acres of irrigable Project Lands of the Company. In this regard, however, it is mutually acknowledged that the ultimate duty of water will be determined and fixed by the Court, and if ultimately fixed at a duty of less than 4.5 acre-feet for Company lands, the extra subscription for said 7,253 acre-feet may be cancelled by either party.

5. Reclamation will be asked to approve the arrangement provided for herein and to agree that it will on request of the District issue an additional block notice for 3,000 acre-feet of Project Water. The District will make the water which the Company is willing to accept available to the Company at the District's standard price for that area and under its standard procedures. This will be done after proper petition from the Company, if after the statutory hearing it is determined by the District's Board to be proper. The District will also make available to the Company any needed portion of the unsold water under Development Block Notice No. 1 on the same basis. It is, however, specifically agreed that this extra allotment water will only be utilized by the Company, or its shareholders, on Project Irrigable Lands, and the additional water is only agreed to by the District for up to 7,253 acres of Project Lands.

6. In each of the Project water petitions and contracts there exists a percentage limit on the amount of Project water

that can be used from the beginning of the irrigation season until June 30th of each year. This limit is the percentage of the irrigation diversion requirement or amount of storage water purchased that the water user can receive through June 30th from storage. With the concurrence of Reclamation, that limitation will be modified or removed from the Company's present contracts.

7. The District, with the approval of Reclamation and the State Engineer, will allow the Company to store direct flow water in Starvation Reservoir, and use other needed Project conveyance facilities during the current irrigation season for regulatory purposes, but only on a space available basis. The purpose of such use is to promote the more efficient regulation and use thereof. The District operator, in cooperation with the River Commissioner, will account for the direct flow water so stored in Starvation Reservoir and report the total acre-feet amount stored each year by the Company. The Company will be billed after the end of each irrigation season, but no later than November 30th of each year for such storage privilege. Failure on the part of the Company to pay by December 31st of said year will be grounds for cancellation by the District. Reclamation has indicated that the cost to store direct flow water in Starvation Reservoir shall be \$\_\_\_\_\_ per acre-foot per season, plus a carriage charge of \$\_\_\_\_\_ per acre-foot per season. Payment will be made by the Company to the District and the District will transmit the payment to Reclamation by December 31st each year. There shall be no right to carry over any stored water beyond the current irrigation season, nor to use the storage facilities, except for

regulatory purposes and to insure the more efficient use of said water. All expenses and legal costs incurred in obtaining any approvals of the State Engineer, if any such approval is necessary, will be paid by the Company. It is the intent of the District to extend similar storage privileges in Project facilities to other users of Project Water in the Duchesne River system.

8. In consideration of the privilege of storing its direct flow water in Starvation Reservoir, as provided in Paragraph 7 hereof, the Company agrees to persue to completion the negotiation of subscription agreements with its individual stockholders who have the right to purchase Project Water, and to provide the accounting therefor and to restrict the use of Project Lands, all as required by federal law.

9. In Article 5.(b) of the Petitions to Obtain Project Water and in Article 6.(b) of the Contract with Canal Companies, it states:

"(b) The project plan for water supply is based on a water duty of 4 acre-feet per acre for each irrigation season. The annual irrigation demand for land irrigated by Petitioner as it applies to non-project or project water is limited to a total duty each season as finally fixed by the courts, but if the duty is finally fixed by law in an amount other than 4 acre-feet per acre for the irrigation season then the petition and order approving the same shall be subject to renegotiation and adjustment if required by the United States of America, the District or Petitioner.

That provision shall remain operative. If the Court fixes a duty for direct flow rights, other than 4.0 acre-feet per acre, or if the Court refuses to approve this arrangement for use of an additional Project Water for the Company's irrigable Project



Lands in Pleasant Valley, this arrangement will be subject to renegotiation, or may be cancelled by either party.

10. It is mutually acknowledged by the parties hereto that Starvation Reservoir has been constructed and that there has been an extensive canal rehabilitation program undertaken by the District and Reclamation, in order to provide a full season water supply for lands in the Uinta Basin which are to be served by the Project. Delivery schedules were provided for in the subscription contracts or petitions, so that excessive amounts of water would not be diverted from the Duchesne River and its tributaries during high water. Excess diversions, if made, would impact the ability of the Project to store water in Starvation Reservoir for late season use by those who have subscribed for Project Water, either directly or through mutual irrigation companies in which they are shareholders. Many of the canals diverting from the Duchesne River and its tributaries had excessive canal seepage losses. Therefore, as a part of the Bonneville Unit of the Central Utah Project (or the Project), the District and Reclamation have extensively rehabilitated these canals, including the canal of the Company, with the objective of making it possible to deliver adequate water to the land. A substantial portion of this rehabilitation work has been completed, but additional work is ongoing. It is agreed by the parties hereto that if the duty for lands irrigated from the Duchesne River and its tributaries is increased above 4.0 acre-feet per acre by the Court or the State Engineer, it will adversely impact the ability of the Project to deliver stored

water to the subscribers of Project Water. It is mutually recognized that Project Water will be utilized in accordance with all provisions of federal reclamation law, and the Company agrees to abide by such rules and to require its shareholders to do likewise.

Signed the day and year above written.

Attest:

CENTRAL UTAH WATER CONSERVANCY  
DISTRICT

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Its President

Attest:

UINTAH BASIN IRRIGATION CO.

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Its President